IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6694 of 1986

with

SPECIAL CIVIL APPLICATION No 2976 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT RAJYA JAHER BANDHKAM MAJOOR MANDAL
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 6694 of 1986
MR SV RAJU for Petitioner No. 1
MR. S.P. HASURKAR, AGP, for Respondent No. 1
NOTICE SERVED for Respondent No. 2-4

2. Special Civil Application No. 2976 of 1986
MS. VINITA S. VINAYAK FOR MR PM THAKKAR for
Petitioner No. 1

MR. S.P. HASURKAR, AGP, for Respondent No. 1
MR. P.K. JANI for respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 07/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

Gujarat Rajya Jaher Bandhkam Majoor Mandal, petitioner, has filed this petition with a prayer to issue a writ of mandamus or any other writ, order or direction directing the respondents, their officers, agents, servants to pay to the daily workers employed in scarcity work in Mehsana, Banaskantha and Junagadh Districts salary at the rate of Rs. 17.35 per day for the period they worked in scarcity works and further to direct the respondents to pay the difference in wages to the workers employed in the scarcity work in the aforesaid three districts on account of payment of lesser wages by the respondents. The said petition was filed somewhere in October, 1986.

2. The relevant facts giving rise to this petition are as under:

2.1 It is the case of the petitioner that the petitioner Union is a Trade Union registered under the Trade Union Act and recognized by the State Government. The petitioner Union is concerned about the welfare of the employees of the State Government, more particularly, in the P.W. Department.

2.2 It is the case of the petitioner that the petitioner Union states that several persons are engaged as daily workers by the State Government and by the other respondents and when they are engaged on regular basis i.e. when they are doing the work in the building section, they are being paid salary at the rate of rs. 17.35 per day and when the same persons are engaged in road maintenance etc., they are being paid salary at the rate of Rs. 16.65 per day. It is the case of the petitioner that this petition pertains to three districts, namely, Mehsana, Banaskantha and Junagadh Districts. The petitioner union states that during scarcity, these daily workers are required to forgo their regular work and they are required to do scarcity work and at the time of doing scarcity work, they are being made to do the same work which they are doing on regular basis in the building and road-side maintenance, instead

of being paid salary at the rate of Rs. 17.35 or Rs. 16.65 per day as the case may be, the workers are being paid arbitrarily Rs. 11/- per day. The petitioner union states that this action of the Government is violative of Article 14, 16 and 39-D of the Constitution of India.

2.3 The petitioner Union further states that it has also made several representations to the State Government and to the Hon'ble Chief Minister on 10.6.1986, to the Secretary, Road and Building Department, Gandhinagar on 27.5.1986 and 6.8.1986.

3. Surendranagar Jilla Panchayat, petitioner, has also filed Special Civil Application No. 2976 of 1986 challenging the legality and validity of the action of the respondents in reducing the daily wages from Rs. 16.60 to Rs. 11/- per day as the same is violative of the minimum wages prescribed under the Minimum Wages Act, 1948. It is the case of the petitioner that there are 300 workers working as daily wages since many years in the Public Works Department of the respondent District Panchayat. It is the case of the petitioner that the members of the petitioner Sang are working in the maintenance of roads department and are at present getting Rs. 15.25 per day and the workers working in the maintenance of buildings department are getting rs. 16.60 per day. However, it is the case of the petitioner that a settlement was arrived at between the petitioner Sangh and the respondent panchayat on 5.3.1985 where the respondent panchayat had agreed to pay the minimum wages to the members of the petitioner Sangh. Copy of the agreement is annexed with the petition at Annexure-A.

3.1 It is the case of the petitioner Sangh that the Government has issued Circular dated 6.5.1986 in which it has been stated that the persons working in scarcity work then as per manual para 122 the labourers will be paid Rs. 1/- per day. The aforesaid circular has been challenged by the petitioner in this petition. It may be noted that when the matter was placed before this Court on 24.6.1986 this Court (Coram: M.B. Shah, J (as he then was)) passed the following order:

> "Rule. With regard to I.R. it is contended that the petitioners are working since last more than three years in the office of R. No. 2 and that they are not working at the Scarcity Relief Works and therefore aforesaid circular dt. 6.5.1986 is not applicable. Taking into consideration aforesaid contention, ad-interim relief is granted, restraining the respondents from

implementing the aforesaid circular vis-a-vis the petitioner Sangh."

3.2 The learned counsel for the petitioner has also invited my attention to the provisions of the Minimum Wages Act. The learned counsel submitted that a minimum or subsistence wages will have to be fixed with respect to workmen irrespective of the capacity of industry to pay. The minimum wages are statutory liability. The said liability has to be discharged by the employer under the provisions of the Minimum Wages Act. The learned counsel relied on the judgement of the Hon'ble Supreme Court in the case of BEJAY COTTON MILLS LTD. VS. STATE OF AJMER 1955 (1) LLJ 129 in which on pages 130-131 the Hon'ble Supreme Court has observed thus:

"It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the directive principles of the State policy embodied in Art. 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions (vide South India Estate Labour Relations Organization Vs. State of Madras (1954 - I L.L.J. 8). If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restrains should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages."

3.3 The learned counsel for the petitioner submitted that it is well settled that the right to minimum wages is a statutory right which vests in the employee and no further adjudication of the right of minimum wages is called for. It constitutes an existing statutory right. Statutory minimum wages is not regarded as static or fixed but a dynamic one, varying from time to time with

the growth and development of living standard and notion of advancing progressive social philosophy.

3.3A The purpose of the Minimum Wages Act is to provide that no employer shall pay to workers in certain categories of employment wages at rates less than the minimum wages prescribed by notification under the Act.

3.4 The learned counsel for the petitioner submitted that minimum wages is a wage which in any event must be paid, irrespective of the extent of profits, the financial condition of establishment or availability of workman on lower wages. The minimum wage is independent of the kind of industry and applies to all alike, big or small.

4. Mr. Hasurkar, learned A.G.P., states that the Government has already issued Circular dated 19.11.1986 after this Court passed order and the Government has already paid minimum wages of Rs. 16.50 per day to all the workers in view of the order passed by this Court.

5. The learned A.G.P. further states, on instructions from the officers who are present in the Court, that these matters are of 1986 and thereafter the Government has constituted Daulatbhai Parmar Committee consisting of Shri Daulatbhai Parmar, Hon'ble Ex-Minister of Gujarat, and the said Committee has reviewed the entire working of the workers in the Government and Panchayats and also fixed the wages for them. In view of the recommendation made by Daulat Committee, the workers have been regularised and they are paid salary as per the provisions of the Minimum Wages Act as interpreted by the judgement of the Hon'ble Supreme Court.

6. In view of the above, the challenge in these petitions does not survive and they are disposed of accordingly. Rule is discharged in each petition. Liberty to revive in case of difficulty.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)

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